

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE CLARK, *et al.*,

Plaintiffs,

Case No. 21-10001

Honorable Victoria A. Roberts

v.

ANTHONY ABDALLAH, *et al.*,

Defendants.

ORDER: (1) ADOPTING REPORT AND RECOMMENDATION [ECF No. 75]; (2) GRANTING DEFENDANT ABDALLAH AND SMITH'S MOTION FOR NON-PARTY BEARIA STEWART TO SHOW CAUSE [ECF No. 54]; and (3) REQUIRING NON-PARTY BEARIA STEWART TO APPEAR IN PERSON ON AUGUST 9, 2022 AT 11:30 A.M. TO SHOW CAUSE WHY THE COURT SHOULD NOT HOLD HER IN CONTEMPT FOR FAILING TO COMPLY WITH A SUBPOENA DUCES TECUM

Defendants Anthony Abdallah and Kevin Smith ("Defendants") move the Court to issue an order for Bearia Stewart ("Stewart"), a non-party witness, to show cause why she should not be held in contempt for failing to comply with a subpoena requiring her to testify at a deposition. [ECF No. 54].

The Court referred this case to Magistrate Judge Elizabeth A. Stafford for all non-dispositive pretrial proceedings.

Magistrate Judge Stafford entered a Report and Recommendation recommending that the Court GRANT Defendants' motion and order

Stewart to show cause why she should not be held in contempt for failing to obey the subpoena duces tecum. [ECF No, 75].

No party filed objections to the Report and Recommendation within the fourteen-day period pursuant to Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1).

The Court **ADOPTS** the Report and Recommendation [ECF No. 75] and **GRANTS** Defendants' motion [ECF No. 54].

The Court incorporates by reference the Report and Recommendation's background, findings, and conclusions.

Under Rule 45(g), the Court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." Fed. R. Civ. P. 45(g). Magistrate Judge Stafford found that Defendants met their burden to show by clear and convincing evidence that Stewart failed to comply with a subpoena requiring her to testify at a deposition. Stewart has not appeared to provide an excuse for her failure to comply with the subpoena.

Accordingly, the Court **ORDERS** Bearia Stewart to appear before this Court in person at 231 W. Lafayette Blvd., Room 252, Detroit, MI 48226 on **August 9, 2022 at 11:30 a.m.** to show cause why she should not be held in contempt for failure to comply with the subpoena requiring her to testify at a

deposition. If Stewart fails to appear, the Court will hold her in contempt of Court.

Alternatively, Stewart may comply with the subpoena now by appearing at a deposition and testifying before the August 9 hearing.

By July 22, 2022, Defendants must personally serve on Stewart a revised subpoena setting forth a time and place for her to testify before August 9.

If Stewart complies with that subpoena and testifies fully and cooperatively before August 9, she need not appear at the August 9 hearing. If Stewart appears at the deposition but is not cooperative, she must appear at the hearing on August 9 or the Court will hold her in contempt.

Defense counsel must inform the Court if the hearing is no longer necessary.

The Court **ORDERS** Defendants to personally serve a copy of this Order on Stewart and to file proof of service by July 22, 2022.

IT IS ORDERED.

S/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: July 20, 2022